

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

BQ/s

74-1517

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

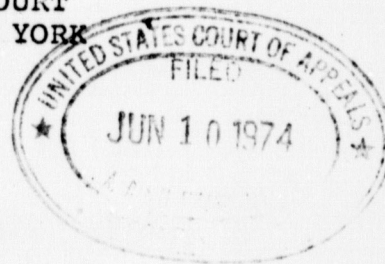
SALVATORE BADALEMENTE
and HERBERT YAGID,

Appellants.

Docket No. 74-1517

APPENDIX TO THE BRIEF
FOR APPELLANT HERBERT YAGID

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
HERBERT YAGID
FEDERAL DEFENDER SERVICES UNIT
606 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

WILLIAM EPSTEIN,
Of Counsel

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE CARTER

C. Form No. 100 Rev.

73 CRIM. 471

TITLE OF CASE		For U. S.:
THE UNITED STATES		264-3938
vs.		Secial A.U.S. Atty.
) JERRY ALLEN		Michael C. Eberhardt
) SALVATORE THOMAS BADALAMANTE	4-11-74	
) ARTHUR BERARDELLI		
) JAMES FEENEY	3-8-74	
) LOUIS STERN, a/k/a Louis Rush	6-11-74	
) LEONARD TURI	4-16-74	
) HERBERT YAGID	4-11-74	
		For Defendant:

05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 2 mailed	Clerk	4/11/74	Receipt	5	5
S. 3 mailed -4-	Marshal	4/11/74	Yagid	5	5
iolation	Docket fee	4/11/74	Receipt		5
tle 18					
ec. 2314,2 transport in					
nterstate Commerce					
ounterfeited securities					
ct.2)					
371 conspiracy so to					
o (ct.1) --- TWO COUNTS---					

DATE	PROCEEDINGS
4-21-73	Filed Indictment. JERRY ALLEN - SALVATORE T. BADALAMANTE and HERBERT YAGID - B/W's ordered. -- Cannella, J. B/W's issued for above 3 defendants.
4-1-73	JERRY ALLEN- Deft. present - Bail fixed at \$15,000. P.R.B. - Deft. ordered photographed and fingerprinted. Hearing adj. to June 11, 1973. - Cannella, J.
4-7-73	Allen-Filed P.R.B. in the sum of \$15,000. dtd.6/1/73.
4-1-73	J. Allen- Filed affdvt. and notice of motion for an order extending defendants bail limits to include the Continent of Europa, Canada and the State of Florida. -- ret. 6-11-73 in Rm 110
4-7-73	J. Allen- Filed memo endorsed on above motion: " Application granted on U.S. Atty's request. Submit order on consent. -- Palmieri, J.

JUDGE CARTER

DATE	PROCEEDINGS
6-13-73	LOUIS STERN and HERBERT YAGID-Filed affdvt & notice of motion for-Discovery & inspection and dismissal Bill of Particulars etc.-Ret. 6-22-73.
6-11-73	ALLEN, BADALAMENTE, BERARDELLI, STERN, TURI and YAGID(attys present) plead not guilty Bail cont'd. FEENEY (atty present) plead not guilty. Fingerprinted & Photographed. R.O.R. \$10,000. P.R.B.---Palmieri, J.
6-15-73	JAMES FEENEY-Filed order-Bail limits are extended to allow deft. to travel throughout the U.S., Canada and Europe etc.--Carter, J.
6-18-73	SALVATORE, THOMAS, BADALAMENTE AND LEONARD-Filed affdvt & notice of motion for Discovery and inspection Inspection, Bill of Particulars etc. Ret. 6-22-73.
6-13-73	SALVATORE THOMAS BADALAMENTE-Filed Warrant for Arrest with Marshal's return-District of N.J.-Deft. arrested 5-22-73-Released same day \$10,000. PRB.
6-13-73	HERBERT YAGID-Filed Warrant for Arrest with Marshal's return-Arrested by FBI Agent Released \$10,000. PRB.
6-11-73	JAMES FEENEY-Filed PRB without security in the sum of \$10,000.
6-19-73	JAMES FEENEY-Filed notice of appearance of Murray Legal Aid Marvin B. Segal 375 Park Ave. N.Y.C. Pl 3-7800
6-19-73	JERRY ALLEN-Filed notice of appearance of Feldshuh & Frank, 144 E. 44th St. N.Y.C. 687-8
6-19-73	LEONARD TURI & SALVATORE BADALAMENTE-Filed notice of appearance of Salvatore Nigrone 233 B'way N.Y.C. Wo 4-8883
6-19-73	LOUIS STERN & HERBERT YAGID-Filed notice of appearance of Paul P. Rao, 233 B'way N.Y.C. WO 4-8866
6-21-73	Filed Governments notice of readiness for trial.
6-21-73	Jerry Allen- Filed order extending defendants bail limits to include the Continent of Europa, the country of Canada and the State of Florida, during the pendency of his prosecution. The deft. to give notice to the U.S. Atty. prior to his departure from the S.D. of N.Y. and within 48 hours of his return thereto. Carter, J.
7-10-73	Herbert Yagid-Filed affidavit and notice of motion for an order permitting the deft. to extend his bail limits to the Continental U.S.
7-10-73	Herbert Yagid-Filed order on deft's motion to extend bail limits. "Deft's" bail limits extended to the Continental U.S. consented by Govt. (mailed notice) Carter, J.
7-16-73	FEENEY- Filed affdvt. and notice of motion (a) inspection of grand jury minutes (b) a bill of particulars (c) to inspect and photograph certain documents. FEENEY- Filed defts. memorandum of law in support of above motion.
7-24-73	BADALAMENTE- Filed defts. affdvt. and notice of motion for an order extending defts. bail limits. - ret. 7-24-73
7-24-73	BADALAMENTE- Filed order extending defts. bail limits to incl. the continental U.S.A.- Carter, J.

DATE	PROCEEDINGS
7-26-73	All defts'- Filed Governments affdvt. in opposition to motions for discovery & inspection, bill of particulars, disclosure of Grand Jury minutes and dismissal.
7-26-73	All defts'- Filed Governments affdvt. in opposition to defts pre-trial motions.
7-31-73	Jerry Allen- Filed order further extending defts. bail limits to include all of the continental USA
8-6-73	ALL DEFTS - Filed Govts notice of motion for reargument of Court's decision to inspect.
8-20-73	Filed Govts affdvt & notice of motion for rehearing.
8-20-73	Filed Govts memorandum of law.
9-6-73	Filed Govts. Bill of Particulars w/requests of Defts. Turi and Badalamente.
9-11-73	ALL DEFENDANTS- Filed Governemrs supplemental bill of particulars.
9-12-73	Hearing held - trial date set for Jan. 2, 1974 -- Carter, J.
9-28-73	All defendants- Filed Governments notice of motion for a re-hearing re disclosure
9-28-73	All defendants- Filed Governments affdvt. in support of above motion for a re-hearing.
9-28-73	All defendants- Filed Governments memorandum in support of Governments application to re-consider.
Nov. 7-73	LINDER-- Field govts. bill of particulars.
Nov. 12-73	TURI--(atty. present)--deft. withdraws his plea of not guilty and pleads GUILTY to Count 1 only. PSI ordered. Sentence adj. to Jan. 15, 1974 at 9:30am. Bail contd. \$10,000. PRB Carter, J.
11-20-73	Filed transcript of record of proceedings, dated <i>Sept 12, 1973</i>
Jan- 2-74	JAMES FEENEY- Filed notice of appearance by Landas Rosen & Miller, Esqs. 110 E. 59th Street, NYC 10022 (Michael Miller of counsel) 832-0500
1-20-74	Filed transcript of record of proceedings, dated <i>1-12-73</i>
Jan. 30-74	Filed for Govt. Motion to adjourn trial date.
Feb. 15-74	Filed for Deft. BADALAMENTE - Order -- Ordered that the records of Herbert Olsberg be produced in U.S.D.C. for S.D.N.Y. and it is further ordered that such records be produced prior to the trial of the above matter - Carter, J.(m/n)
Mar. 8-74	JAMES FEENEY - Leave to file the within Nolle Prosequi is granted - Carter, J.
Feb. 28-74	ARTHUR BERARDELLI (atty present) withdraws his plea of Not Guilty and PLEADS GUILTY to count 1 only. Pre-sentence report ordered. Sentence adj. to April 9-1974 at 9:30 A.M. in Room 519. Bail continued \$10,000 P.R.B. Carter, J.

DATE	PROCEEDINGS
Mar.4-74	JERRY ALLEN (atty present) withdraws his plea of Not Guilty and PLEADS GUILTY to count 1 only. Pre-Sentence report ordered. Sentence adjourned without date. Bail continued \$15,000 P.R.B. - Carter, J.
Mar.4-74	Jury Trial begun as to defts. SALVATORE THOMAS BADALAMENTE, LOUIS STERN AND HERBERT YAGID (attys. present) Governments motion to dismiss count 2 as to deft. BADALAMENTE GRANTED
Mar.5-74	Trial continued
Mar.6-74	Trial continued Government rests
Mar.7-74	Trial continued Deft. Badalamente Rests- Deft's Stern & Yagid Rests.
Mar.8-74	Trial concluded - Jury Verdict as to Deft. BADALAMENTE GUILTY ON COUNT 1 STERN GUILTY ON COUNTS 1 & 2 YAGID GUILTY ON COUNTS 1 & 2 P.S.R. ordered. Sentence adjourned to April 11, 1974 at 9:30 A.M. in room 519. Bail continued as to all defts. - CARTER, J.
3-12-74	Filed Government's proposed Examination of Prospective Jurors. Filed Judgment(atty. present)
4-11-74	HERBERT YAGID - It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS, on count 1 and TWO (2) YEARS To run consecutively on count 2. Bail Pending Appeal is granted and fixed in the amount of \$10,000 Personal Recognizance Bond unsecured. Bail limits are to cover the states of New York and New Jersey. CARTER (copies issued)
4-11-74	LOUIS STERN - Filed JUDGMENT(atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE(5) YEARS, execution of sentence is suspended and the defendant is placed On probation for a period of FIVE(5) YEARS, subject to the standing probation order of this Court, pursuant to Title 18, United States Code Section 3651. Special condition of probation being that the defendant reside at a Community Treatment Center. - CARTER, J. (copies issued)
4-11-74	SALVATORE THOMAS BADALAMENTE - It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment of ONE(1) YEAR. Bail Pending Appeal is granted and fixed in the amount of \$10,000. Personal Recognizance Bond unsecured. Bail limits are to cover the states of New York and New Jersey - CARTER, J (copies issued)
Apr-11-74	SALVATORE THOMAS BADALAMENTE- Filed defendants notice of appeal to the USCA for the 2nd Circuit from final judgment entered on 4-11-74 -- mailed copies to US Atty. and deft. address 244 Mc Elroy Ave., Fort Lee, N.J.
4-16-74	ARTHUR BERARDELLI - Filed JUDGMENT(atty. present) It is adjudged that the Imposition of is suspended, and the defendant is hereby placed on probation for a period of THREE (3) YEARS, subject to the standing probation order of this Court. Probation to begin following sentence imposed by Judge Motley. On deft's counsel's motion count 2 is dismissed with the consent of the Government. - CARTER, J. (copies issued)

DATE	PROCEEDINGS
4-16-74	LEONARD TURI - FILED JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2) YEARS Execution of sentence is suspended, and the defendant is placed on probation for a period of TWO(2) YEARS, subject to the standing probatinn order of the Court. On defendant's counsel's motion count 2 is dismissed with the consent of the Government. CARTER, J. (copies issued)
4-16-74	BERADELLI & TURI - Confidential & Sealed Envelope not to be opened except on order of the undersigned - So ordered - CARTER, J.
4-18-74	HERBERT YAGID - Filed Notice of Appeal to U.S.C.A. from the judgments of conviction dtd 4/11/74 (m/n)
4-23-74	HERBERT YAGID - Filed Notice of Motion and Order and Affidavits, returnable 4/24/74 at 12:30 P.M. Rm. 506, for an order granting permission for atty. of record to withdraw from the case relative to the transmission of the record on appeal and ordering the assigning of this matter to the Appeals Division of Legal Aid.
4-24-74	HERBERT YAGID - Filed ORDER re: Notice of Motion dtd 4/23/74 -- Ordered that atty. of record Paul P. Rao, Jr. is hereby permitted to withdraw from the processing of the appeal, and it further ordered - that the deft. case be assigned to the Appeals Division of Legal Aid subject to their approval. PIERCE, J. (m/n)
4-30-74	Filed Letter from USDC for the Dist. of N.J. dated Feb. 1.74 to the Clerk of SD of NY. enclosed with Magistrate J.D. Schwitzer paper Re: Herbert Yagid.
4-30-74	Filed transcript of proceedings dated Mar. 4, 5, 6, 7, 8, 1974
4-30-74	Filed transcript of proceedings dated Apr. 10, 1974 at 4:20 PM
4-30-74	Filed transcript of proceedings dated Apr. 11, 1974 9:30 AM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

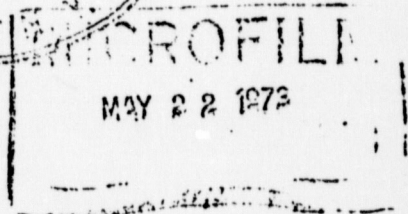
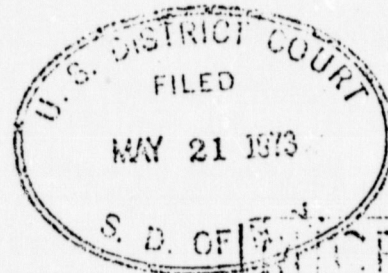
- v - :

INDICTMENT

73 Cr.

JERRY ALLEN, SALVATORE THOMAS :
✓BADALAMENTE, ARTHUR BERARDELLI,
JAMES FEENEY, LOUIS STERN a/k/a ✓
LOUIS RUSH, LEONARD TURI and
HERBERT YAGID, :

Defendants :



-----x
COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, [unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States,] to wit, [to violate Title 18, United States Code, Section 2314.]

2. [It was part of said conspiracy that the defendants, with fraudulent intent, would] unlawfully, wilfully, and knowingly transport and cause to be transported in interstate and foreign commerce, falsely made, forged, altered and counterfeited securities,] to wit, passbooks and certificates of deposit from Bank of America, Los Angeles, California, from Home Savings and Loan Association in Los Angeles, California and from American Savings Association in Dallas, Texas, knowing the same to have been falsely made, forged, altered and counterfeited.

3. Among the means whereby said defendants agreed to carry out the conspiracy were the following:

(a) The defendants JERRY ALLEN, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California for use thereafter as collateral for a loan from a Swiss bank.

(b) The defendant HERBERT YAGID would travel from New York, New York to Los Angeles, California for the purpose of securing a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California.

(c) The defendants JERRY ALLEN, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas for use thereafter as collateral for a loan from a Swiss bank.

(d) The defendant HERBERT YAGID would travel from New York, New York to Chicago, Illinois to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(e) The defendant LEONARD TURI would travel from Chicago, Illinois to Newark, New Jersey to deliver a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(f) The defendants JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would arrange to share in the illegal proceeds obtained through the loan to be secured by the falsely made, forged, altered and counterfeited passbook.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following overt acts, among others:

1. On or about March 20, 1973, the defendant HERBERT YAGID attended a meeting at Apartment 23-G, 300 East 74th Street, New York, New York.

2. On or about March 20, 1973, the defendants ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

3. On or about March 21, 1973, the defendants JERRY ALLEN, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

4. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, [LEONARD TURI] and HERBERT YAGID attended a meeting at the Westbury Hotel, 69th Street and Madison Avenue, New York, New York.

5. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, JAMES FEENEY and [LEONARD TURI] attended a meeting at the Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

6. On or about March 23, 1973, the defendants SALVATORE THOMAS BADALAMENTE and HERBERT YAGID attended a meeting at Leo's Restaurant, Fort Lee, New Jersey.

7. On or about March 26, 1973, the defendants ARTHUR BERARDELLI and LOUIS STERN a/k/a LOUIS RUSH attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

8. On or about March 31, 1973, the defendants ARTHUR BERARDELLI and HERBERT YAGID attended a meeting at the Croydon Hotel Coffee Shop, 86th Street and Madison Avenue, New York, New York.

(Title 18, United States Code, Section 371)



COUNT TWO

The Grand Jury further charges:

In or about March or April, 1973, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, with fraudulent intent, did unlawfully, wilfully and knowingly cause to be transported and transport in interstate commerce] . from Chicago, Illinois to Newark, New Jersey, falsely made, forged, altered and counterfeited securities,] to wit, an American Savings Association passbook and an American Savings Association Certificate of Deposit, knowing the same to have been falsely made, forged altered and counterfeited.

(Title 18, United States Code, Sections 2314 and 2)

Simon Kent
FOREMAN

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk
By B. Edwards
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v -

JERRY ALLEN, SALVATORE THOMAS
BADALAMENTE, ARTHUR BERARDELLI,
LOUIS STERN a/k/a LOUIS RUSH,
LEONARD TURI and HERBERT YAGID,

Defendants. ----- x

INDICTMENT

73 Cr. 471

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 2314.

2. It was part of said conspiracy that the defendants, with fraudulent intent, would unlawfully, wilfully and knowingly transport and cause to be transported in interstate and foreign commerce, falsely made, forged, altered and counterfeited securities, to wit, passbooks and certificates of deposit from Bank of America, Los Angeles, California, from Home Savings and Loan Association in Los Angeles, California and from American Savings Association in Dallas, Texas, knowing the same to have been falsely made, forged, altered and counterfeited.

3. Among the means whereby said defendants agreed to carry out the conspiracy were the following:

(a) The defendants JERRY ALLEN, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California for use thereafter as collateral for a loan from a Swiss bank.

(b) The defendant HERBERT YAGID would travel from New York, New York to Los Angeles, California for the purpose of securing a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California.

(c) The defendants JERRY ALLEN, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas for use thereafter as collateral for a loan from a Swiss bank.

(d) The defendant HERBERT YAGID would travel from New York, New York to Chicago, Illinois to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(e) The defendant LEONARD TURI would travel from Chicago, Illinois to Newark, New Jersey to deliver a falsely made, forged, altered or counterfeited passbook of American Savings Association, Dallas, Texas.

(f) The defendants JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would arrange to share in the illegal proceeds obtained through the loan to be secured by the falsely made, forged, altered or counterfeited passbook.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following overt acts, among others:

1. On or about March 20, 1973, the defendant HERBERT YAGID attended a meeting at Apartment 23-G, 300 East 74th Street, New York, New York.

2. On or about March 20, 1973, the defendants ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

3. On or about March 21, 1973, the defendants JERRY ALLEN, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

4. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, LEONARD TURI and HERBERT YAGID attended a meeting at the Westbury Hotel, 69th Street and Madison Avenue, New York, New York.

5. On or about March 22, 1973, the defendants ARTHUR BERARDELLI and LEONARD TURI attended a meeting at the Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

6. On or about March 23, 1973, the defendants SALVATORE THOMAS BADALAMANTE and HERBERT YAGID attended a meeting at Leo's Restaurant, Fort Lee, New Jersey.

7. On or about March 26, 1973, the defendants ARTHUR BERARDELLI and LOUIS STERN a/k/a LOUIS RUSH attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

8. On or about March 31, 1973, the defendants ARTHUR BERARDELLI and HERBERT YAGID attended a meeting at the Croydon Hotel Coffee Shop, 86th Street and Madison Avenue, New York, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

In or about March or April, 1973, in the Southern District of New York and elsewhere, JERRY ALLEN, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, with fraudulent intent, did unlawfully, wilfully and knowingly cause to be transported and transport in interstate commerce from Chicago, Illinois to Newark, New Jersey, falsely made, forged, altered or counterfeited securities, to wit, an American Savings Association passbook and an American Savings Association Certificate of Deposit, knowing the same to have been falsely made, forged, altered or counterfeited.

(Title 18, United States Code, Sections 2314 and 2)

FOREMAN

PAUL J. CURRAN
United States Attorney for the
Southern District of New York.

CHARGE TO THE JURY

Hon. Robert L. Carter

Each of you ladies and gentlemen has before you a copy of the charge that I am about to read. You will not be able to take it into the jury room with you. My purpose in furnishing it to you is the hope and expectation that by being able to absorb it with two of your senses, that is, hearing it and looking at it, that you will be more fully able to understand the charge.

I will have to, from time to time, go off the charge but I think it will be indicated when I do on the written charge.

We now come to that part of the case where the evidence is in, the lawyers have presented their arguments and you are about to exercise your final role which is to pass upon and decide the fact issues that are in the case. You are the sole and exclusive judge of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as you find them. The logical result

2 of that application is the verdict in the case.

3 With respect to any fact matter, it is your recol-
4 lection and yours alone that governs. Anything that counsel,
5 either for the Government or for the defense, may have said
6 with respect to matters in evidence during the trial, in a
7 question, in a colloquy with the Court, in argument or in
8 summation, is not to be substituted for your own recollection
9 of the evidence.

10 So, too, anything the Court may have said during
11 the trial, or may refer to during the course of these instruc-
12 tions as to any factual matter in evidence is not to be taken
13 in lieu of your own recollection. The case must be decided
14 by you upon the sworn testimony of the witnesses, and such
15 exhibits as were received in evidence.

16 At times throughout this trial, I have been called
17 upon to make rulings on various matters of law, such as when
18 a question put to a witness was objected to, and after a
19 question was answered a motion was made to strike the answer.
20 I have sustained some objections and I have overruled others.
21 I have struck out answers and rejected exhibits that were
22 offered. It is essential in the performance of your duty that
23 when anything was ordered stricken from the record or rejected
24 you put it out of your mind and disregard it. Similarly, if
25 a question was asked and an objection to that question

2 was sustained and no answer was given, the question itself
3 should play no part in your consideration of the case. Please
4 do not concern yourselves at all with my reasons for any of
5 these rulings. These are purely legal matters.

6 Conferences at the bench were conducted at the
7 request of the attorneys. As I have advised you, these
8 conferences were solely on questions of law and are of no
9 concern to you. You are not to draw any inferences against
10 either side because of requests for such conferences, and I
11 might add, nor are you to draw any inferences because I have
12 denied from time to time holding conferences that were requested.

13 I have permitted each of you to take notes during the
14 course of this trial. I expect you to use whatever notes you
15 took merely as memory aids. They should not be allowed to
16 take precedence over your independent memory of the facts.
17 Moreover, merely because a fellow juror may have memorialized
18 in his or her notes something contrary to your recollection is
19 not to be taken by you to mean that your memory is in error.
20 It is your own recollection of the facts and yours alone which
21 is controlling.

22 In deciding this case, you will be called upon to
23 consider both direct evidence and circumstantial evidence. It
24 is well to explain now the difference between these two types
25 of evidence.

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2 Direct evidence is where a witness or a participant
3 testified as to what he saw, heard or observed, what, he knows
4 of his own knowledge, something which comes to him by virtue
5 of his senses. A document can also contain direct evidence.

6 Circumstantial evidence is evidence of facts and
7 circumstances from which one may infer connected facts which
8 reasonably flow in the common experience of mankind. Stated
9 somewhat differently, circumstantial evidence is that evi-
10 dence which tends to prove a disputed fact by proof of other
11 facts which have a logical tendency to lead the mind to a
12 conclusion that those facts exist which are sought to be
13 established.

14 The circumstantial facts or facts upon which it is
15 sought to base a disputed fact must be shown and not left to
16 rest on conjecture, and when shown, in order to use it to
17 prove a disputed fact therefrom, it must appear that the
18 disputed fact in question is the only one that can follow from
19 the circumstantial fact, that any other explanation is fairly
20 and reasonably excluded.

21 Let me give you a practical illustration of what
22 that means. I think it is raining outside now as I look out
23 of the window, and assuming it is raining, all of us could
24 say that it is raining. We see it, we feel it, we know it is
25 there, if we were outside. Suppose we came in here this

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2 morning when it wasn't raining and the blinds were drawn and
3 in the course of these deliberations we begin to see people
4 come into this courtroom with umbrellas, with raincoats, and
5 they are wet. Then we will conclude that it is raining out-
6 side although we can't see it, and this is the difference and
7 the meaning of circumstantial evidence.

8
9 Circumstantial evidence, if believed, is of no less
10 value than direct evidence for in any case you must be con-
11 vinced beyond a reasonable doubt of the guilt of a defendant.

12 There are times when different inferences may be
13 drawn from facts, whether they are proved by direct or circum-
14 stantial evidence. The Government asks you to draw one set
15 of inferences while the defendants ask you to draw another.
16 It is for you to decide and for you alone which inferences you
17 will draw.

18 It is your function to determine the truth or falsity
19 of the testimony of each witness. No inference as to the
20 credibility of any witness should be drawn from the fact that
21 upon occasion I have asked questions of a witness. My questions
22 were only intended for clarification or to expedite matters.
23 They were not intended to suggest any opinion as to the
24 credibility of a witness who appeared before you.

25 Now, how do you determine the truth and how do you
appraise the credibility of a witness? Well, as I told you

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2 before, simply put, you use your plain, everyday common sense.

3 In weighing the testimony of the witnesses, you can
4 consider their relationship to the Government or to a defendant,
5 as the case may be, and any bias or interest in the outcome
6 of the case, his or her manner while testifying, what was
7 the witness' candor, whether he or she equivocated, whether
8 was direct or indirect in some testimony, whether he was frank
9 and straightforward, open or deliberately confusing, truthful
10 or evasive, the extent to which he has been corroborated or
11 contradicted by other credible evidence or whether there were
12 inconsistencies within the witness' testimony, his criminal
13 record, if any, and whether he changed his testimony.

14 An interested witness is not necessarily unworthy of
15 belief. It is a factor, however, which you may consider in
16 determining the weight and credibility to be given to that
17 witness' testimony.

18 If you find that any witness has wilfully testified
19 falsely to any fact, you may disregard all his testimony or
20 accept such part of it as you believe worthy of belief as it
21 appeals to your reason or judgment.

22 A witness may be discredited by contradictory
23 evidence or by evidence that at other times the witness has
24 made statements which are inconsistent with his or her testimony
25 here. If you believe that any witness has been discredited

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2 in this manner, you may give the testimony of that witness
3 whatever credibility, if any, you think it deserves.

4 The weight of the evidence is not necessarily
5 determined by the number of witnesses testifying on either
6 side. You should consider all the facts and circumstances
7 in evidence to determine which of the witnesses are worthy of
8 greater credence. You may find that the testimony of a
9 smaller number of witnesses on one side is more credible than
10 the testimony of a greater number of witnesses on the other
11 side.

12 The Government is entitled under the law to use
13 various investigative methods, including the use of recording
14 equipment. I instruct you that as a matter of law, the use
15 of electronic equipment in this case was proper, lawful, and
16 did not violate the defendants' rights. The fact that such
17 investigative techniques were used, therefore, should not in
18 any way concern you or affect your consideration of the issues
19 before you.

20 The fact that the Government is a party here, that
21 the prosecution is brought in the name of the United States of
22 America, entitles it to no greater consideration than that
23 accorded to any other party to the litigation. By the same
24 token, it is entitled to no less consideration. All the
25 parties, Government and individuals alike, stand equal before

1 54kgs

2 this court of justice.

3 As I advised you at the start of this trial, the
4 indictment is merely an accusation, a charge. It is not
5 evidence or proof of a defendant's guilt and no inference of
6 any kind may be drawn from the indictment.

7 The Government has the burden of proving the
8 charges against each defendant beyond a reasonable doubt. It
9 is a burden that never shifts, and remains upon the Govern-
10 ment throughout the entire trial. A defendant does not have
11 to prove his innocence. On the contrary, he is presumed to
12 be innocent of the accusation contained in the indictment.

13 The presumption of innocence was in his favor at
14 the start of the trial, continued in his favor throughout
15 the trial, is in his favor even as I instruct you now. It
16 remains in his favor during the course of your deliberations
17 in the jury room. It is removed only if and when you are
18 satisfied that the Government has sustained its burden of
19 proving the guilt of a defendant beyond a reasonable doubt.

20 Now, what is a reasonable doubt? It is a doubt
21 based on reason, which arises from the evidence or lack of
22 evidence in the case. It is a doubt that a reasonable man or
23 woman might entertain. It is not a fanciful or speculative
24 doubt. It is not an imagined doubt, it is not a doubt that
25 a juror might conjure up in order to avoid performing an

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2 unpleasant task or duty. It is not proof to an absolute
3 certainty.

4 Let me repeat: it is a reasonable doubt. It is a
5 doubt that appeals to your reason, to your judgment, to your
6 common understanding and your common sense, a doubt that will
7 cause you to hesitate to act in matters of importance in your
8 daily lives.

9 On the other hand, the Government does not have to
10 prove the guilt of the defendants beyond all possible doubt.
11 If when you consider the evidence in this case, you have a
12 reasonable doubt that the Government has proved any element of
13 the crime charged, then you must return a verdict of acquittal.

14 You may not return a guilty verdict simply because
15 you feel that it is more likely than not that the defendant
16 committed the crime charged. A guilty verdict is only appro-
17 priate if each and every one of you is satisfied that the
18 defendant's guilt has been proved beyond all reasonable doubt.

19 There has been testimony by Mr. Olsberg, an indivi-
20 dual commonly known as an informant or informer. The law
21 permits the use of informers, provided the rights of a
22 defendant are not violated and, therefore, whether or not you
23 approve of the use of informers should not enter into your
24 deliberations.

25 You are required, however, to consider the

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2 credibility of this witness and to do this you must use the
3 guidelines which I gave you earlier.

4 The fact that a person has been convicted of a
5 serious crime, especially one bearing on his veracity, may be
6 considered by you as bearing on his credibility as a witness
7 in this case.

8 You may consider whether Mr. Olsberg's testimony was
9 a fabrication, inspired by his own motives or self-interest
10 or personal advantage or induced by a promise or a hope or an
11 expectation of favorable consideration by the Government in
12 connection with these or other matters. You should also
13 consider whether Olsberg's testimony was motivated by any
14 hostility towards the defendants.

15 Once again, I must remind you that merely because
16 Olsberg may have been previously convicted or had an interest
17 in this case or was hostile to a defendant does not mean his
18 testimony was not truthful and candid. Those factors indi-
19 cate that you should view his testimony with caution, but you
20 must determine the weight to be given to his testimony based
21 on whether or not, and to what extent, he is to be believed.

22 The Government also called as a witness Jerry Allen,
23 who, if his testimony is to be accepted, was an accomplice in
24 the crimes charged against the defendants in this case.

25 In the prosecution of crime, the Government is

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2 frequently called upon to use witnesses who are accomplices.
3 Often it has no choice. The Government must rely upon wit-
4 nesses or transactions such as they are.

5 The fact that Allen has been convicted of a serious
6 crime, especially one bearing on his veracity, may be
7 considered by you as bearing on his credibility as a witness
8 in this case.

9 There is no requirement in the federal courts that
10 the testimony of an accomplice be corroborated. The Govern-
11 ment contends that Jerry Allen's testimony is corroborated by
12 other evidence with respect to several key portions of his
13 testimony. However, even without such corroboration, conviction
14 may rest upon the testimony of an accomplice, if you believe
15 it and find it credible. It does not follow that because a
16 person has acknowledged participation in the crimes charged
17 against the defendant that he is incapable of giving a true
18 version of what he testified to in the case on trial.

19 His testimony, however, should be viewed with
20 caution and scrutinized with care. The fact that a witness is
21 an accomplice may be considered by you as bearing on his
22 credibility. Was his testimony inspired by any motive of
23 reward, of self-interest, or hostility to the defendants so
24 that he gave false or colored testimony against them in this
25 court before you? If you find that it was, you ought,

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2 unhesitatingly, to reject it.

3 However, after a cautious and careful examination
4 of the accomplice's testimony and his demeanor upon the
5 witness stand, if you are satisfied that he told the truth
6 here as to certain events, there is no reason why you should
7 not accept it as credible and act upon it accordingly.

8 Let me now turn to the indictment in this case.
9 Stated briefly, the first count charges that Defendants
10 Badalamente, Stern and Yagid conspired with each other and
11 with four other named individuals to transport in interstate
12 or foreign commerce falsely made, forged, altered and counter-
13 feited passbooks and certificates of deposit. The second
14 count charges that Defendants Stern and Yagid actually caused
15 to be transported in interstate commerce a falsely made,
16 forged, altered and counterfeited passbook and certificate of
17 deposit.

18 It is your obligation to consider separately each
19 of the individual charges or counts of the indictment and to
20 decide whether as to each count, the Government has or has not
21 sustained its burden of proving beyond a reasonable doubt the
22 guilt of each defendant named in that particular count.

23 Let me read the indictment:

24 Count 1: The grand jury charges that from on or
25 about January 1, 1973 up to and including the date of filing

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2 of this indictment in the Southern District of New York and
3 elsewhere, Jerry Allen, Salvatore Thomas Badalamente, Arthur
4 Berardelli, Louis Stern also known as Louis Rush, Leonard
5 Turi and Herbert Yagid, the defendants, unlawfully, wilfully
6 and knowingly did combine, conspire, confederate and agree
7 together and with each other and with other persons to the
8 grand jury known and unknown, to commit certain offenses
9 against the United States, to wit, to violate Title 18, United
10 States Code, Section 2314.

11 2: It was part of said conspiracy that the defen-
12 dants with fraudulent intent would unlawfully, wilfully and
13 knowingly transport and cause to be transported in interstate
14 and foreign commerce, falsely made, forged, altered and counter-
15 feited securities, to wit, passbooks and certificates of
16 deposit from the Bank of America, Los Angeles, California, the
17 Home Savings and Loan Association in Los Angeles, California,
18 and from American Savings Association in Dallas, Texas, knowing
19 the same to be falsely made, false, forged, altered and
20 counterfeited.

21 2: Among the means whereby said defendants agreed
22 to carry out the conspiracy were the following: A) Defendants
23 Jerry Allen, Arthur Berardelli, Louis Stern also known as
24 Louis Rush, and Herbert Yagid, would make arrangements to
25 secure a falsely made, forged, altered and counterfeited

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2 passbook of either Homes Savings and Loan Associates, Los
3 Angeles, California or Bank of America, Los Angeles, California
4 for use thereafter as a collateral for a loan from a Swiss
5 bank.

6 B: The defendant Herbert Yagid would travel from
7 New York, New York, to Los Angeles, California for the purpose
8 of securing a falsely made, false, forged and altered, counter-
9 feited passbook of either Home Savings and Loan Association,
10 Los Angeles, California or Bank of America, Los Angeles,
11 California.

12 C: The defendants Jerry Allen, Arthur Berardelli,
13 Louis Stern also known as Louis Rush, Leonard Turi and Herbert
14 Yagid would make arrangements to secure a falsely made,
15 forged, altered and counterfeited passbook of American Savings
16 Association, Dallas, Texas, for use thereafter as collateral
17 for a loan on a Swiss bank.

18 D: The defendant Herbert Yagid would travel from
19 New York, New York to Chicago, Illinois, to secure a falsely
20 made, forged, altered and counterfeited passbook of American
21 Savings Association, Dallas Texas.

22 E: The defendant Leonard Turi would travel from
23 Chicago, Illinois to Newark, New Jersey to deliver a falsely
24 made, forged, altered and counterfeited passbook of American
25 Savings Association of Dallas, Texas.

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2 F: The defendants Jerry Allen, Salvatore Thomas
3 Badalamente, Arthur Berardelli, Louis Stern also known as
4 Louis Rush, Leonard Turi and Herbert Yagid would arrange to
5 share in the illegal proceeds obtained through the loan to
6 be secured by the falsely made, forged, altered and counter-
7 feited passbook.

8 In furtherance of the conspiracy and to effect the
9 objects thereof, the defendants in the Southern District of
10 New York and elsewhere committed and caused to be committed
11 certain overt acts, which I shall read to you in a few
12 minutes. But first I shall instruct you on the law applicable
13 to Count 1:

14 The conspiracy statute is Section 371 of Title 18
15 of the United States code. It provides:

16 If two or more persons conspire either to commit any
17 offense against the United States or to defraud the United
18 States or any agency thereof in any manner or for any purpose
19 and one or more of such persons do any act to effect the object
20 of the conspiracy, then they are guilty of conspiracy.

21 In this case it is charged that the object of the
22 conspiracy was a violation of Section 2314 of Title 18, which
23 reads in pertinent part:

24 Whoever with unlawful or fraudulent intent transports
25 in interstate or foreign commerce any falsely made, forged,

2 altered or counterfeited securities, knowing the same to have
3 been falsely made, forged, altered or counterfeited, is guilty
4 of committing a crime.

5 In order to find a defendant guilty of the conspiracy
6 charged in the first count of the indictment, you must find
7 beyond a reasonable doubt:

8 First, that sometime between January 1, 1973 and
9 the date of the filing of the indictment, which was May 21,
10 1973, an agreement existed between each defendant on trial and
11 any other person, whether on trial or not; that it was part
12 of this agreement to do the following:

13 A: To make arrangements to secure a falsely made,
14 forged, altered or counterfeited passbook and certificate of
15 deposit from the Bank of America or Home Savings and Loan
16 Association or American Savings Association for use thereafter
17 as collateral for a loan from a Swiss bank.

18 B: To transport or cause to be transported in inter-
19 state or foreign commerce a falsely made, forged, altered and
20 counterfeited passbook and certificate of deposit from the
21 Bank of America or Home Savings and Loan Association or
22 American Savings Association, knowing that said passbook and
23 certificate of deposit would be falsely made, forged, altered
24 or counterfeited.

25 C: To make arrangements to share in the illegal

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2 proceeds obtained through the loan to be secured by the
3 falsely made, forged, altered and counterfeited passbook.

4 Second, that the defendant whose guilt or innocence
5 you are considering knowingly and wilfully became a partici-
6 pant in the conspiracy with knowledge of its alleged criminal
7 purpose.

8 Third, that at least one of the alleged conspirators
9 not necessarily the defendant you are considering, knowingly
10 committed at least one of the overt acts set forth in the
11 indictment at or about the time and place alleged.

12 If the Government fails to establish each of these
13 three elements beyond a reasonable doubt, you must acquit the
14 defendant as to Count 1. If the Government succeeds in
15 satisfying this burden of proof, you must convict.

16 As I have informed you, the first of the elements
17 which you must find that the Government has proved beyond a
18 reasonable doubt is that the conspiracy charged in the indict-
19 ment existed. First I want to discuss with you what the term
20 "conspiracy" means, because that term is here used in a legal
21 context and therefore has a somewhat different meaning than it
22 has when it is used colloquially.

23 What is a conspiracy? A conspiracy is a combination
24 or agreement of two or more persons to accomplish a criminal or
25 unlawful purpose. The gist of the crime of conspiracy is the

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2 unlawful combination or agreement to violate the law. Whether
3 or not the defendants finally accomplished what it is alleged
4 they conspired to do is immaterial. That is to say, the
5 Government is not obliged to prove that a purpose of the
6 conspirators was attained.

7 It has often been said that a conspiracy is a
8 partnership in crime in which each members becomes the agent
9 of every other member. To establish a conspiracy, however,
10 the Government is not required to show that the alleged
11 conspirators sat around a table and entered into a solemn
12 compact, orally or in writing, stating that they have formed
13 a conspiracy to violate the law and setting forth details of
14 the plans. It is sufficient if two or more persons in any
15 manner through any contrivance, impliedly or tacitly, come
16 to a common understanding to violate the law. Express
17 language or specific words are not required to indicate assent
18 or attachment to a conspiracy. On the other hand, mere
19 similarity of conduct among various persons, and the fact
20 that they may have associated with each other and may have
21 assembled together and discussed common aims and interests
22 does not necessarily establish the proof of the existence
23 of a conspiracy.

24 If upon consideration of all the evidence, direct
25 and circumstantial, testimonial and documentary, you find

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2 beyond a reasonable doubt that the minds of at least two of
3 the alleged conspirators met in an understanding way and that
4 they agreed as I have explained a conspiratorial agreement to
5 you, to work together in furtherance of the unlawful scheme
6 alleged in the indictment, then proof of the existence of the
7 conspiracy is satisfied.

8 Once you are satisfied that the conspiracy charged
9 existed, you must ask yourselves who its members were. You
10 may not assume that a defendant joined a conspiracy simply
11 because you are convinced that he knew or was associated or
12 had dealings with people who conspired to violate the law.
13 Similarly, the mere fact that two persons or more are on trial
14 together cannot be considered in any way as indicating that
15 they participated in a conspiracy to violate the law.

16 All of the conspirators need not be acquainted with
17 each other. They may not have previously associated together.
18 One of the defendants may know only one other member of the
19 conspiracy, but if he enters into an unlawful agreement with
20 that other member of the conspiracy, he becomes a party
21 thereto.

22 To conclude that a defendant was a member of a
23 conspiracy, you must find that he knew the unlawful purpose
24 of the alleged conspiracy, that knowing the purpose he
25 intentionally joined in the endeavor and that he had an

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2 interest in making it succeed. It is not necessary, however
3 that you find that each conspirator was fully informed as to
4 the details or the full scope of the conspiracy, or partici-
5 pated in every aspect of the conspiracy. A person becomes
6 a member of a conspiracy by associating himself with a common
7 plan or scheme, knowing the central aim or principal purpose
8 of that common plan or scheme and intending to help bring
9 about its success.

10 Knowledge, wilfullness, and intent exist in the
11 mind. Since it is not possible to look into a man's mind
12 to see what went on, the only way you have of arriving at
13 a decision on these questions is for you to take into
14 consideration all the facts and circumstances shown by the
15 evidence, including the exhibits, and to determine from all
16 such facts and circumstances whether the requisite knowledge,
17 wilfullness and intent were present at the time in question.
18 In making this determination, you should presume that a person
19 intends the natural and probable consequences of his acts.

20 You will recall that throughout the trial, the acts
21 and statements of one alleged co-conspirator in the absence of
22 other alleged co-conspirators were received in evidence subject
23 to connection, that is, only with respect to the particular
24 person or persons making them.

25 However, if you find that a conspiracy existed, then

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in considering whether or not a particular defendant was a member of the conspiracy, you may rely not only on his own statement, but on the statements and declarations of the other alleged co-conspirators.

Moreover, if you find that a conspiracy existed, then any act or declaration made during the conspiracy and in furtherance of it by a person found by you to have been a member of the conspiracy may be considered against any defendant whom you find was also a member, even though such act or declaration was made in the absence and without the knowledge of that defendant.

Now we come to the third element you must consider as to Count 1. If you have found that the alleged conspiracy existed and that the defendant whose guilt you are considering was a member of it, then you must consider the overt act requirement.

The offense of conspiracy is complete when the unlawful agreement is made and any single overt act is done by one of the alleged conspirators in furtherance of the conspiracy.

By the term "overt act," we mean an act committed in an effort to accomplish some object or purpose of the conspiracy. The overt act in this sense need not be a crime in itself. It must, however, be an act which follows from the

2 conspiracy and is directed towards accomplishment of the
3 criminal purpose of the conspiracy. I will now read the overt
4 acts charged in the indictment.

5 In furtherance of the conspiracy and to effect the
6 objects thereof, the defendants in the Southern District of
7 New York and elsewhere committed and caused to be committed
8 the following overt acts, among others:

9 1) On or about March 20, 1973, the defendant
10 Herbert Yagid attended a meeting at Apartment 23-G, 300 East
11 74th Street, New York, New York.

12 2) On or about March 20, 1973, the defendants Arthur
13 Berardelli, Louis Stern also known as Louis Rush, and Herbert
14 Yagid attended a meeting at the Luxor Baths Hotel, 121 West
15 46th Street, New York, New York.

16 3) On or about March 21, 1973, the defendants Jerry
17 Allen, Louis Stern also known as Louis Rush, and Herbert
18 Yagid attended a meeting at the Luxor Baths Hotel, 121 West
19 46th Street, New York, New York.

20 4) On or about March 22, 1973, the defendants
21 Arthur Berardelli, Leonard Turi and Herbert Yagid attended
22 a meeting at the Westbury Hotel, 69th Street and Madison
23 Avenue, New York, New York.

24 5) On or about March 22, 1973, the defendants
25 Arthur Berardelli and Leonard Turi attended a meeting at the

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Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

6) On or about March 23, 1973, the defendants Salvatore Thomas Badalamente and Herbert Yagid attended a meeting at Leo's Restaurant, Fort Lee, New Jersey.

7) On or about March 26, 1973, the defendants Arthur Berardelli and Louis Stern, also known as Louis Rush, attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

8) On or about March 31, the defendants Arthur Berardelli and Herbert Yagid attended a meeting at the Croydon Hotel coffee shop, 86th Street and Madison Avenue, New York, New York.

Title 18, United States Code, Section 371.

If you find beyond a reasonable doubt that a conspiracy existed as charged in the indictment, and that during the existence of the conspiracy at least one of the overt acts alleged was knowingly done by one or more of the conspirators in the furtherance of some object of the conspiracy, proof of the conspiracy offense is then complete. It is complete as to each defendant found by the jury beyond a reasonable doubt to have been knowingly and wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act.

While the indictment charges in Count 1 that the conspiracy began on or about January 1, 1973 and continued to the day of its filing, May 21, 1973, it is not essential that the Government prove that the conspiracy started and ended at or about those specified dates. It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth in the indictment, and that at least one of the overt acts was committed in furtherance thereof in that period.

Count 2 of the indictment reads as follows:

The grand jury charges in or about March or April of 1973, in the Southern District of New York and elsewhere, Jerry Allen, Arthur Berardelli, Louis Stern, also known as Louis Rush, Leonard Turi, and Herbert Yagid, the defendants, with fraudulent intent did unlawfully, wilfully and knowingly cause to be transported and transported in interstate commerce from Chicago, Illinois to Newark, New Jersey, falsely made, forged, altered and counterfeited securities, to wit, American Savings Association passbook and American Savings Association certificate of deposit, knowing the same to have been falsely made, forged, altered and counterfeited, Title 18, United States Code, Section 2314 and 2.

You will recall that Section 2314 of Title 18 provides that whoever with unlawful or fraudulent intent

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2 transports in interstate or foreign commerce any falsely made,
3 forged, altered or counterfeited securities, knowing the same
4 to have been falsely made, forged, altered or counterfeited,
5 is guilty of a crime.

6 It is not necessary for the Government to show that
7 the defendants Stern and Yagid physically committed the crime
8 themselves. Section 2 of Title 18 of the United States Code
9 provides, in pertinent part, that: Whoever commits an offense
10 against the United States or aids, abets, counsels, commands,
11 induces or procures its commission, or whoever wilfully causes
12 an act to be done which, if directly performed by him or
13 another, would be an offense against the United States, is
14 guilty of that offense.

15 Thus, a person who aids and abets another to commit
16 an offense is just as guilty of that offense as he would be had
17 he committed it himself.

18 Before you can conclude that a person aided and
19 abetted, you must first find that the substantive crime charged,
20 in this case, transporting in interstate commerce a falsely
21 made, forged, altered and counterfeited passbook and certifi-
22 cate of deposit, was in fact committed. Secondly, you must
23 determine that the defendant in some way associated himself
24 with the criminal venture, that he participated in it as
25 something he wished to bring about, and that by his actions,

2 he tried to make the crime succeed. You must find more than
3 the defendant's mere presence during or knowledge of an offense

4 The Government does not contend that the defendants
5 Stern and Yagid physically committed the crime of transporting
6 the forged American Savings Association passbook and certifi-
7 cate of deposit in interstate commerce. Nor does the Govern-
8 ment contend that each defendant is necessarily an aider and
9 abettor. What the Government contends is that the defendants
10 Stern and Yagid are guilty of the substantive offense
11 charged in Count 2 because it was committed in furtherance of
12 and during the course of the unlawful conspiracy of which they
13 were members.

14 You will recall that I told you that a conspirator
15 is liable for the acts and statements of his co-conspirators
16 provided they were made within the scope of the unlawful agree-
17 ment as he saw it during the pendency of the conspiracy and
18 in furtherance of its objectives.

19 To find Mr. Stern or Mr. Yagid guilty of the crime
20 of transporting the forged American Savings Association pass-
21 book and certificate of deposit in interstate commerce as
22 charged in Count 2 of the indictment, you must find beyond a
23 reasonable doubt:

24 First, that on or about April 2, 1973, Leonard Turi
25 transported a forged or counterfeited American Savings

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2 Association passbook and certificate of deposit in interstate
3 commerce.

4 Second, that on or about April 2, 1973, a conspiracy
5 existed to transport the forged passbooks and certificates of
6 deposit in interstate or foreign commerce.

7 Third, that the defendant you are considering was
8 a member of the conspiracy to transport the forged passbook
9 and certificate of deposit in interstate or foreign commerce.

10 Fourth, that Leonard Turi was a member of the same
11 conspiracy to transport the forged passbook and certificate
12 of deposit in interstate or foreign commerce.

13 Fifth, that Leonard Turi's transportation of the
14 forged American Savings Association passbook and certificate
15 of deposit was a crime committed in furtherance of the same
16 conspiracy.

17 Sixth, that the American Savings Association passbook
18 and certificate of deposit in question were falsely made,
19 forged, altered or counterfeited by someone, not necessarily
20 the defendants or members of the conspiracy.

21 Seventh, that the defendant you are considering knew
22 the passbook and certificate of deposit were falsely made,
23 forged, altered or counterfeited.

24 Eighth, that the defendant you are considering
25 wilfully did the act or acts charged.

An act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence or other innocent reason.

An act is wilfull if it is done knowingly, deliberately and with an evil motive or purpose. An act is not done wilfully if it is done as a result of mistake, carelessness, lack of an evil motive or purpose or for some other innocent reason.

It is not necessary for the Government to prove that a particular defendant actually knew that Leonard Turi was transporting the American Savings Association passbook and certificate of deposit on April 2, 1973, or that a particular defendant participated in the forgery or counterfeiting of the passbook or certificate of deposit, or that he knew the identity of the person who committed the forgery or counterfeiting.

Defendant Stern and Yagid contend that even if you find that a conspiracy existed, and that they were members of it, Yagid withdrew formally from the conspiracy on March 31, 1973 and Stern withdrew on or about April 1, 1973. A conspirator has the right to discontinue his participation in carrying out a conspiracy. However, in order to withdraw from a conspiracy, a defendant must take some affirmative action to disavow the purpose of the conspiracy, as for example, by making a clean breast to appropriate authorities, or by

1 75kgs

616

2 advising his co-conspirators that he is abandoning the project.
3 Mere cessation of activity is not enough. And the burden of
4 establishing a withdrawal is on the defendant who asserts it.

5 Defendants Yagid and Stern contend that they with-
6 drew from the conspiracy to transport forged passbooks in
7 interstate commerce prior to the transportation of the American
8 Savings Association passbook and certificate of deposit by
9 Leonard Turi on April 2, 1973. Whether or not the conversations
10 which Mr. Yagid reportedly had with Mr. Olsberg on March 31,
11 1973 and April 1, 1973 constituted an effective withdrawal
12 as to Stern or Yagid is for you to decide.

13 If you find that the defendants did not withdraw
14 from the conspiracy, or that an attempted withdrawal was not
15 effective in that their prior acts helped set in motion an
16 illegal scheme which necessarily resulted in Turi's interstate
17 transportation of a forged passbook, then you may proceed to
18 determine whether or not they are guilty of the substantive
19 crime charged in Count 2 in accordance with the instructions
20 I have already given you. If you find that the defendants
21 did effectively withdraw on or about March 31 and April 1,
22 1973, then they were not members of the conspiracy on April
23 2, 1973 when it is submitted that Leonard Turi transported a
24 forged passbook, and you must therefore acquit them of the
25 charge in Count 2.

2 Withdrawal from the conspiracy should not be
3 considered by you as a defense to Count 1, that is, the
4 conspiracy count, if you find that the defendant whose conduct
5 you are considering, Yagid or Stern, committed at least one
6 overt act in furtherance of an illegal plan prior to his
7 alleged withdrawal. Indeed, the Government has offered proof
8 to show that Messrs. Yagid and Stern committed several acts
9 prior to their alleged withdrawal, which acts the Government
10 contends were in furtherance of an illegal plan to transport
11 forged passbooks in interstate commerce, and Defendant Yagid
12 has admitted the commission of some such overt acts by him
13 and Defendant Stern. As to those acts, you will recall
14 defendants assert the defense of entrapment. Of course, if
15 you find that the defendants committed no overt acts prior
16 to their alleged withdrawal, and that they did in fact
17 affirmatively and effectively withdraw, you must acquit.

18 Defendants Stern and Yagid assert as a defense that
19 they were victims of entrapment by an agent of the Government.

20 The word "entrapment" that I just used is a legal
21 term. It has a technical meaning, not that of popular speech
22 or colloquial, ordinary usage. Therefore I must explain the
23 word and meaning of "entrapment" as it is used in the law.

24 The function of law enforcement is not only the
25 prevention of crime but also the detection and apprehension of

1
2 criminals. Manifestly, that function does not include the
3 manufacturing of crime. The defense of entrapment is based
4 upon the policy of the law not to ensnare or entrap innocent
5 persons into the commission of a crime. But a line must be
6 drawn between the entrapment of the unwary innocent and the
7 trap for the unwary criminal.

8 A basic feature of entrapment is that the idea or
9 design of committing the crimes originated with a law enforce-
10 ment officer rather than with a defendant; that the defendant
11 had no previous disposition, intent or purpose to commit the
12 alleged offenses, and that the law enforcement officer or
13 Government employee implanted in the mind of an innocent
14 person the disposition to commit the alleged offense and
15 instigated and incited its commission in order that the defen-
16 dant might be arrested and prosecuted.

17 If you find that an agent or employee of the Govern-
18 ment merely afforded a favorable opportunity or facilities
19 to the defendant for the commission of the alleged crime, such
20 conduct on the part of the Government does not constitute
21 entrapment. Entrapment would occur only if you find that the
22 Government agents induced the defendant to commit the crime
23 charged in the indictment and that the criminal conduct of
24 the defendant was the product of the Government's activity.

25 If you find any credible evidence creating the

2 reasonable possibility that a Government agent or employee
3 instigated and incited or otherwise induced the defendants
4 to commit the crime charged, then the Government must prove
5 beyond a reasonable doubt that such inducement was not the
6 cause or creator of the crime, that is, that the defendant
7 had been predisposed and willing to commit the crime.

8 If the prosecution has satisfied you beyond a
9 reasonable doubt that the defendant was ready and willing to
10 commit the offense charged, but was awaiting a favorable
11 opportunity to commit the offense, then you may find that the
12 inducement, if any, which brought about the actual offense,
13 was no more than the providing of what appeared to the defen-
14 dant to be a favorable or timely or convenient opening or
15 facility for the criminal activity in which the defendant may
16 have preferred to engage, and, in such circumstances, you
17 may find that the Government agent has not seduced an innocent
18 person or persons, but has only provided the means for the
19 defendant to effectuate or realize his own then existing
20 purpose.

21 I have now completed my charge about the specific
22 crimes alleged in the indictment. I now address myself to more
23 general considerations which you must bear in mind during your
24 deliberations.

25 First, I must emphasize again that there are three

defendants on trial here and as to each count, you must consider separately whether the specific defendant charged in that count has been proved guilty beyond a reasonable doubt.

It is your duty to give separate personal consideration to the case of each defendant. When you do so, you should analyze what the evidence in that case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely with regard to other defendants.

Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him. The fact that you may find one or more of the accused guilty or not guilty on any particular count should not influence your verdict with respect to the other defendants or with respect to any other count.

As I told you before, the Government has the burden of proving the charges against each defendant beyond a reasonable doubt. A defendant does not have to prove his innocence. A defendant has the right to remain silent. He does not have to testify, or present any evidence in his behalf and you may not draw any inference or conclusion or form any prejudice because a defendant did not testify or present evidence.

On the other hand, the law permits a defendant to testify in his own behalf if he wishes to do so. Mr. Yagid

1 80kgs

621

2 elected to testify. The testimony of a defendant must be
3 considered by you as would the testimony of any other witness.
4 You must determine the credibility of a defendant who testifies
5 and in so doing, you must consider the deep personal interest
6 which every defendant has in the outcome of his case. Indeed,
7 it is fair to say that any defendant has the greatest stake
8 in the outcome. The defendant's interest in the result of
9 his trial is of a character possessed by no other witness.
10 That interest requires that you receive such testimony with
11 caution and in appraising its credibility, you may take the
12 defendant's supreme interest into consideration.

13 However, it by no means follows that simply because
14 a person has a vital interest in the end result, he is not
15 capable of telling a truthful, candid and straightforward
16 story. It is for you to decide to what extent, if at all, his
17 interest has affected or colored his testimony. den

18 Now, under your oath as jurors, you can't allow
19 consideration of the punishment which may be inflicted upon
20 a defendant, if he is convicted, to influence your verdict in
21 any way or in any sense to enter into your deliberations.

22 The duty of imposing sentence rests exclusively on
23 the Court. Your function is to weigh the evidence in the case
24 and to determine the guilt or innocence of a defendant solely
25 upon the basis of such evidence and the law.

2 You are to decide the case upon the evidence, and
3 the evidence alone, and you must not be influenced by any
4 assumption, conjecture or sympathy, or any inference not
5 warranted by the facts.

6 If you fail to find beyond a reasonable doubt that
7 the law has been violated, you should not hesitate for any
8 reason to find a verdict of acquittal. But, on the other hand,
9 if you find that the law has been violated as charged, you
10 should not hesitate because of sympathy or any other reason
11 to render a verdict of guilty.

12 I would like to point out that you should not enter
13 the jury room with any preconceived pride of opinion. You
14 should not be unwilling to be convinced by intelligent argu-
15 ments with your fellow jurors. Each juror has to answer to
16 his or her own conscience and each has to decide this case for
17 himself or herself, but in so doing, you should be willing to
18 consider the views of the other jurors and to talk things out
19 and try your best to reach a unanimous agreement.

20 Your verdict must be one with which each juror
21 agrees.

22 If during your deliberations you deem it necessary
23 to have a copy of the indictment, or desire any of the
24 exhibits, they will be sent in to you on request. If you
25 find it necessary again to hear any of the tapes, they will

1 82kgs

2 be played. If you wish any portion of the testimony read or
3 the Court's charge reread, that will be done.

4 In conclusion, let me say, every criminal case is
5 important. It is important to the Government and it is
6 important to the defendant. It is your obligation to decide
7 the case on the evidence and on the law as I have charged it
8 to you.

9 I give the case to you with the assurance that you
10 will do just that.

11 Will counsel meet me in the robing room.

12 (In the robing room.)

13 MR. RAO: Your Honor, firstly, relative to the
14 testimony of the informer, "you are required however to consider
15 the credibility of this witness and to do this, you must use a
16 guideline which I gave you earlier." I respectfully submit
17 that the guideline which you gave earlier was an ordinary
18 witness and --

19 THE COURT: Come on. That charge is perfectly legal.
20 I have given the guidelines with regard to that. Don't waste
21 my time with that.

22 MR. RAO: Secondly, as to Allen, I had requested
23 at the time Mr. Eberhardt brought out the fact of his prior
24 conviction, I requested the Court to tell the jury that the
25 prior conviction of a co-defendant is no evidence of the guilt

1 83kgs

624

2 of any of the defendants on trial here and gives rise to no
3 inference against the defendants on trial, the fact he pled
4 guilty.

5 The next point is at the end when your Honor starts
6 with entrapment.

7 As to that I have asked your Honor in your request
8 to charge to avoid the allusion to the innocent person since
9 it might better be avoided relative to 346 Fed. 2d in the
10 Morrison case.

11 Here in your charge you refer to the innocent person
12 three times, your Honor. In addition thereto, I don't know
13 whether or not the jury will understand, in your charge, where
14 you say the crimes originated with a law enforcement officer
15 rather than a defendant, law enforcement officer or Government
16 employee. I think it should be specific that law enforcement
17 officer is also considered Mr. Olsberg.

18 THE COURT: I have told the jury that when I said
19 he was an informer.

20 MR. RAO: I submit I don't think it was.

21 THE COURT: All right. Next?

22 MR. RAO: The next was to your charge relative to
23 the defendant Yagid.

24 THE COURT: About the fact he testified?

25 MR. RAO: When you said about his testimony, about

1 84kgs

2 him, how he should be judged. You stated he has the greater
3 stake in the outcome and that is, defendant's interest is of
4 supreme interest, and that his testimony should be treated
5 with caution.

6 THE COURT: I don't think I said "supreme," did I?

7 MR. RAO: Yes. I respectfully request that a char
8 about a defendant, his testimony should be treated as any
9 other witness, and there should be no caution relative to hi
10 testimony.

11 THE COURT: That is denied.

12 MR. NIGRONE: With respect to Mr. Badalamente, I
13 join with Mr. Rao on the objections.

14 THE COURT: All objections are denied.

15 (In open court.)

16 THE COURT: Swear the marshal.

17 (Marshal sworn.)

18 THE COURT: Miss Silvermintz, I want to thank you
19 for your services but they are now over. You may be excused.

20 Mrs. Catro and Mr. Mondelli, you are excused now
21 also. However, I don't know how long the jury will be kept
22 today. What I would want you to do is to call my clerk
23 Monday morning at nine o'clock, call my chambers. If the
24 jury is continuing its deliberations, I want you to report
25 here at ten o'clock and sit in the jury room so we can be

APPENDIX D

THE "ALLEN LETTERS"

(7) Robert H. Gork
Attorney General
Department of Justice
Washington, D.C.

Personal

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29-017-51



I

LAUSANNE - OUCHY

TÉL. (021) 26 39 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE DIRECTION WALTER O. SCHNYDER

Monday

Dear Sir;

At present, I am
under 2 indictments.
in the Southern-
District - both of
which are for perjury

admitted 10/27/23

labelled as perjury
'frivolous'

29-017-51
OCT. 30
O.R.O.M.
CRIMINAL GEN. CRIME SEC.

III

I am going to
conduct a press
conference here -
detailing the
methods used by
Don (Tom Doonan
for example) of
your investigators -

When I refused (without
a court order) to
trips and "tapes" -

A number of key
people - including
my own lawyer -

Marty Frank Mu7-8930-

Sorkin named me -

IV I am not a paigior
of virtue - internal
refused to "tape"

Poy Cohn for Mozenthau;
I was actually

named 1963 -
(Lennard Haden) for
allegedly receiving

\$ 150 - in an
indictment - that Judge



Le «BEAU RIVAGE»
LAUSANNE - OUCHY

TÉL (021) 26 38 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE DIRECTION WALTER O. SCHNYDER

I Tyler dismissed -

It is

almost a Kafka -

like nightmare -

I cannot go
home - Sorben has

✓
lover threatened
to have "parasites"
planted on me -
on my apartment -
if I ~~did~~ refuse
to "work" with
him -

51

I have only
glossed over details;
the substance of
what I have
charged - will be
proven - at my
press conference -

VII

You can contact
me by writing :
to ~~the~~

c/o

Hotel Savoy
Zurich

Respectfully
Guy Allen



Le «BEAU RIVAGE»
LAUSANNE - OUCHY

TÉL (021) 263331 - TÉLEX 24341 - TÉLÉGR. BEAURIVAGE LAUSANNE DIRECTION WALTER O. SCHNYDER

X

Among the
people Sorber
wanted me to
keep was Sister
James Williams -
I have
notified the N.Y.

XI.

I was afraid
this case - and
I have written
to Senator Wilson

Please excuse
my violating
protocol -

PAUL J. CURRAN, ESQ., U.S. Attorney

January 10, 1974

Jerome R. Allen (U.S. A. v. Allen, et al. - 73 CR. 471)

On November 5th I sent you a memorandum enclosing a xerox copy of a letter from the above-named defendant making various charges against his treatment by members of your staff. I asked you to investigate the matter and report to me. To date I have not even received the courtesy of an acknowledgment of the communication.

You may take this memorandum as being a renewal of my request of November 5th. Mr. Allen is apparently still in Switzerland but presumably he will return to the United States some time this month and will then be available for trial.

November 5, 1973

Mr. Jerome R. Allen
203 East 72nd Street
New York, New York 10021

Dear Mr. Allen:

I have requested the United States Attorney to look into the matter which you have brought to my attention and to submit his conclusions to me. I shall advise you as soon as I hear from him.

Very truly yours,

RLC/lp

PAUL J. CURRAN, ESQ., U.S. Attorney

November 5, 1973

Jerome R. Allen (U.S.A. v. Allen, et al - 73 CR. 471)

I enclose a xerox copy of a letter which is, I believe, from a defendant in a case now pending before me - U.S.A. v. Allen, et al. (73 CR. 471). It is self-explanatory. While it is difficult for me to give any credence to the assertions in the letter, the possibility that they may be true cannot be dismissed out of hand.

I am, therefore, requesting that you investigate this matter to determine whether Mr. Allen's assertions have merit. I would, of course, appreciate and request that you report your conclusions of your inquiry to me as expeditiously as you can. Moreover, I would be grateful if that report is made to me by you in person.

I do not intend, by the latter statement, to express any underlying suspicion that something may be amiss. It merely seems to me that since the matter involved concerns the integrity of your office that it is something that requires your personal attention and personal assurance to me that whatever the conclusions of the investigation are they are endorsed by you personally.

Enclosures:



OCT 25 1973

Le "BEAU RIVAGE"
LAUSANNE - OUCHY

TÉL. (021) 26 38 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE - DIRECTION WALTER O. SCHNYDER

Judge Carter

Monday

I have written a letter
to Judge Guefen - Please your
hon; forgive my violating
protocol - but I have
been terrorized by an
assistant U.S. Attorney named
Eva Sorben - and his
side - Kirk; Tom Iovano

ONLY COPY AVAILABLE

I stand indicted by
Mr. Eberhardt on a
case that will be
heard before your Court—
Mr Eberhardt has acted
in a proper way—

But Mr. Sorkin has
insisted; using words and
methods beyond rational
belief — that I tape
and entrap a

III

number of prominent
people - or he will

'Crucify me' - tapes

made without court
authorization -

Unless I became
his professional informer -

Mr. Loken warned me -

he would continue naming

me in what he

¹⁰ referred to as his "frivolous"
indictments -

He has bodged my
family - my friends - has
insisted seeing me without
a lawyer - on many -
many occasions -

When I finally
exploded and told him
that I would write
to the court he
said - "Don't bother - it
won't help" ^{Respectfully}
L. Allen

Jerome R. Allen

(P.S.)

OCT 25 1973

203 East 72nd Street New York, N. Y. 10021

U ~~TH~~

Among those he wanted
me to tape were Senator
Javits - and Senator
Harrison Williams -

He also
insisted - in a
rage - that I
tape conversations
with my own lawyer:
Marty Frank - (Mr 7-8930)

✓

I will stand before you;
your home; and swear
as to the above
statements -

I realize the
unorthodoxy of
writing directly to
you - but I am

at the breaking point -
so much so; that I'm
almost afraid to come
home -

Again, my apologies
Jerry Allen

③



Hotel Nova-Park – wo man sich trifft

Hotel Nova-Park, Badenerstrasse 420, 8004 Zürich, Telefon 01 5422 21, Telex: Hotel 52701

1000 Betten in modernsten Zimmern, Bad, Telefon, Radio,
TV-Anschluss, Residence mit luxuriösen 1- bis 4½-Zimmer-
Appartements, Nova Business Grill, Arte Nova, Nova Bar,
Nova Taverne 1515, Nova-Nova-Night Club, Super Fitness-Club
und Hallenbad, Konferenz- und Ausstellungszentrum,
Informationszentrum, Schulungszentrum mit AV, Hotel Shops,
Kollektivsekretariat, Nova Clubs, Nova Kinderclub, Bank,
Reisebüro, Grossparkhaus für 1000 Autos.

Wednesday


Dear Mr. Eberhardt:

Contrary to what you
may have heard - I'll be back
in sufficient time to face
trial - (Crating, etc) a situation
else occur -

I have gone on record;
perhaps defying protocol; as to
Mr. Sorbent's behavior -

While it is understandable
that a prosecutor seek the
help of a defender - there

Zürich, Paradeplatz
Zürich, Hotel Nova Park
Zürich-Kloten, Airport
Luzern, Schwanenplatz 7
Bern, Marktgasse 27


TÜRLEER
Für Uhren - mit Uhren zu Türler


New York 10022
515 Madison Avenue, Room 1009
Tokio, Tenshodo Co. Ltd., 3-4 Ginza
Repair Organisations in five Continents

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II
Should be reasonable limits as to
the kind of pressure... or
illegal means... utilized -
to coerce a defendant -
particularly the use of tapes -
and other interview techniques -

if justice is served
by Cruelty means; we
have then progress; but
a few yards from
Plato's cave -

I cannot fault
your behavior - I will
fight your charge - as
best I can -



Hotel Nova-Park – wo man sich trifft

Hotel Nova-Park, Badenerstrasse 420, 8004 Zürich, Telefon 01 54 22 21, Telex: Hotel 52701

1000 Betten in modernsten Zimmern, Bad, Telefon, Radio, TV-Anschluss, Résidence mit luxuriösen 1- bis 4½-Zimmer-Appartements, Nova Business Grill, Arte Nova, Nova Bar, Nova Taverne 1515, Nova-Nova-Night Club, Super Fitness-Club und Hallenbad, Konferenz- und Ausstellungscenter, Informationszentrum, Schulungszentrum mit AV, Hotel Shops, Kollektivsekretariat, Nova Clubs, Nova Kinderclub, Bank, Reisebüro, Grossparkhaus für 1000 Autos.

It may be ironic to
note; or predict; that Mr.
Jorbin has the kind of
regulate mentality that
will ultimately manifest
itself - when he turns
round his collar - and enters
private practice - attacking
the very method he
once utilized so
recklessly -

Zürich, Paradeplatz
Zürich, Hotel Nova Park
Zürich-Kloten, Airport
Luzern, Schwanenplatz 7
Bern, Marktgasse 27


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When Foley Square
is nothing more than
an antiquated ruin;
historians will ask - "What
manner of man - or men -
administered justice there?"

A philosophical
question - that I'm
certain Charles M.
Sorber and his colleagues -
they are too busy
seeking headlines -

Lucy Allen

Appartements, Nova Business Grill, Arté Nova, Nova Bar,
Nova Taverne 1515, Nova-Nova-Night Club, Super Fitness-Club
und Hallenbad, Konferenz- und Ausstellungszentrum,
Informationszentrum, Schulungszentrum mit AV, Hotel Shops,
Kollektivsekretariat, Nova Clubs, Nova Kinderclub, Bank,
Reisebüro, Grossparkhaus für 1000 Autos.

Hotel Nova-Park - wo man sich trifft

November 26, 1973

Dear Sir:

I initially wrote to you from Lauasaane but apparently no one could decipher my handwriting.

I am under two indictments, both, in a sense, are inter-related. (Southern District)...Ike Sorkin is the Assistant attorney on one case: Mike Eberhardt; the other case. My remarks are directed only towards ~~myself~~ Mr. Sorkin.

There is a sham practiced in Federal Courts wherein a defendant is asked by the Judge, as routine, "Have you been promised anything or threatened by the U. S. attorney?" In virtually every case, the answer is a meek "No..Sir."

When Mr. Sorkin initially called me down to Foley Square to seek my co operation in a number of SEC matters, he introduced me to a Tom Doonan, an investigator with the SEC. To say that the tactics they used, and continue to use, are Orwellian, is understatement. Mr. Sorkin asked me to "tape" my own attorney, Marty Frank. He also repeated a demand, as did Doonan, that I "set ~~me~~ up and tape a number of persons on their "hit parade"...among them Senator Harrison Williams, and ~~other~~ other prominent people with Wall Street orientations.

When I asked if they would secure a court order, they smiled as they replied..."We dont need court orders.....we want results." When I balked a series of pressure unfolded; telephone calls to my answer service and friends, calls made by both of them, calls made at all hours; at times, they left embarrassing messages.

At one point when I adamantly refused to cooperate with them on their level...Doonan warned..."What would happen if, "by chance, someone found narcotics in your car, your apartment..." What would you do then...if we arranged an "arrest" on the spot. Since my strongest addiction is Diet Pepsi, even Sorkin blanched at the suggestion.

It is understandable that a government attorney should seek the cooperation of defendants, but I do not believe that their investigative behavior is above the law. Sorkin warned me that I would be named in an SEC indictment, even though, to quote him "At best...it is a spurious case... we are naming you to break you down." And we'll name you over and over until you tape the people we want."

I am not a paragon of virtue. In 1968, I was indicted for having received \$ 700 to ghost write a stock market letter that was never published. When I refused to co-operate with the government: they named me in a second case charging I had been paid \$ 150. The second was thrown out of court by Judge Tyler. Before the first case was tried, the government asked me to tape Roy Cohn: I refused:

instead I gave Mr. Cohn a sworn affidavit stating that the government wanted me to trap and tape him. He used the affidavit and subsequently won his case.

~~When I told Mr. Sorkin that I would contact your agency and that I would write directly to the Judge he stated, "If you contact the ACLU, I'll break your one way or another."~~

When I told Mr. Sorkin that I would contact your agency and that I would write directly to the Judge he stated, "If you contact the ACLU, I'll break your ~~one way or another.~~"

I am not being poetic or dramatic. I will submit to a lie detector test. I doubt if Mr. Sorkin will.

Sorkin also "advised" me that he had embarrassing information as to my social life that he would "leak" to my family. He met with me ..alone..at the Waldorf Astoria.... again soliciting my assistance: and asking for something which I cannot spell out in this letter.

I am in Switzerland and my case ~~is~~ is due for trial on December 17. I am frankly terrified that when I return, Doonan will live up to his threat of "planting" some narcotics on my person...

This week, my former partner, Philip Stoller, was arrested at Kennedy Airport by Sorkin, Doonan and a Marshall, upon his return to the States from Switzerland. He was informed that he was under indictment for allegedly lying at an SEC hearing. It may be interesting to note that Sorkin forced, not only Mr. Stoller, but his wife and son to surrender their passports. He asked for \$ 750,000 bail.....which may be a clue as to Sorkin's sense of balance.

He refused to permit Mr. Stoller to call his attorney ^{from} the airport; by the time they arrived at Foley Square, his attorney had left for Thanksgiving. And Mr. Stoller, who has never been indicted or ~~arrested~~ a crime, was kept for two days in the House of Detention.

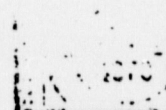
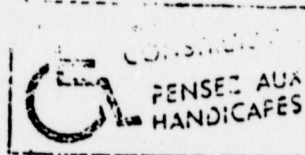
I am not a vestal virgin. But if the government can abide with the Gestapo tactics of some of their attorneys, then we are still in Plato's cave.

How much longer will the perjurious sham of a defendant parroting "No Sir" when asked if he was "threatened," be permitted as routine?

At best, I am condensing months of conversations with Sorkin and Doonan. Space limitations preclude a detailed resume. I received a long distance call from their office two weeks ago: someone..(I don't believe it was Sorkin)..warned.."If you don't come back and turn States evidence...we will see to it that your former wife ~~loses~~ loses her job." Before I could reply, they hung up... will

Respectfully,

Jerry Allen 



Air
Mail
France
USA

Elia Luperin

J.E.C. Office

Room 301

701 1/2 Square

New York N.Y.

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DEPARTEMENT
DE JUSTICE ET POLICE
PRISON
DE SAINT-ANTOINE

9, Chaudronniers
1204 Genève

DÉTENTION
PRÉVENTIVE

RÈGLEMENT

1. Les prévenus peuvent recevoir une visite par semaine, soit le lundi, le mercredi ou le vendredi, de 9 h. 30 à 11 h. ou de 14 à 16 h. Elle a lieu au parloir en présence d'un gardien.

Les visiteurs doivent être munis d'une autorisation délivrée par le juge d'instruction compétent ou, pour les accusés, par le Parquet.

2. Les prévenus peuvent écrire quatre lettres par semaine, deux le samedi et deux le mercredi. Leur courrier, tant celui qu'ils reçoivent que celui qu'ils expédient, est soumis à la censure. Il en va de même des paquets. Ceux-ci peuvent parvenir à la prison tous les jours de 9 h. 30 à 11 h. et de 14 à 16 h. sauf le samedi, le dimanche et jours fériés.

3. Les correspondances renfermant des appréciations ou des observations sur l'établissement, ses employés, ses règlements, ou des injures à l'adresse du destinataire, ne sont ni expédiées, ni délivrées.

4. Il est interdit de mettre dans des récipients en verre ou en métal les denrées alimentaires (confitures, etc.) envoyées aux détenus. On utilisera de préférence des boîtes en carton huilé ou en plastique. L'envoi de charcuterie pendant les chaleurs n'est pas recommandé. Toutes les boissons sont prohibées ainsi que les produits en tubes, excepté les sirops de fruits (emballage plastique).

Genève, le

19

Nom et prénom

*I have made
many mistakes -
in my life - mainly emotional
in the first of
defying common sense
I must be careful
what I write -
I have no lawyer here
I am being charged
with issuing - last year -
a check to a Swiss girl
that did not clear -
about \$2,000 - with intent
I want to work
with you 100% - no
gambits - no abuse
-
Cheyenne - has let
me down - sub your office -*

Il est interdit d'écrire entre les lignes et dans les marges.

The other night, I
went to the "High" - in

part of the Team - Pittsburgh
football game -

I'm a "Dough" -
I am not a

Corn ball - but I cried -
I need to be on the
moral side - The life of a

buried down boulevardier is
a fiction -

I miss my wife
children - and I want to
purge myself of all
suspicious -

I want to know how far I can go
please - with the Anti-Reduction
Committee that grates Phil -
You can hold the gun both ways - John

TIMBRES
PRO JUVENTUTE
En vente à la poste jusqu'au
31 JANVIER



Chas. Sorokin
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U.S. Court House
701 Broadway
Federal Building
New York, N. Y.

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Genève, le

Dec 22 1973

Nom et prénom

Jerome Allen

I have been arrested
should cover my legal liabilities; I am
awaiting funds to pay my debts here.
There is something unheroic about
my current status. Jason went
down in the temple of Sagon;
Hector was destroyed before the
walls of Troy; Hamlet died in
the presence of the Royal Court;
and Jerry Allen squats patiently
in a Swiss jail because of a
bank overdraft. Incidentally, I
telephoned the jeweler in question
at least two weeks before my arrest stating
that I would make the check good. I
have met with Mr. Rond of the State
Department and told him that I would
not oppose extradition. He stated that
your office would ask for minimal bail;
since I voluntarily requested going back.
I am young, I took on the veneer of
an American abroad; preferring French
wine; Italian Sopranos, and German doctors.

Il est interdit d'écrire entre les lignes et dans les marges.

Although I have been in an - thirty
years, my passion for a walk
I would gladly trade a dinner at
Maxim's in Paris; for a Nathan's
frankfurter; and a day at Shea
Stadium to a stroll on the Champ-
Elysée - The pressure being exerted upon me
by certain people in the State - "asking" me
not to return too late on Gargantuan
proportions. I have never operated on I' Croquis's
scale; so why should I become a wild
gypsy? And so a toast; to the "Young Men
What W'as". To his cheeks, for they were
rainbow-colour; to his appetites, for they
were strong; to his blindness; for they were
huge; to his beloved; for she was sweet;
to his pain; for it was sharp; to his
time; for it was brief. In the Lotus
Land where the sunlight fades not,
where the flowers are spring flowers,
and the grass is an April green for
ever; he still walks his faint,
trusting way. God pity us all - with what
pious come have we bought our
philosophy. Bring me back (Thanksgiving) Allen

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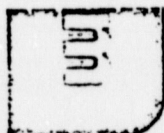
IRA SORKIN US COURT HOUSE FOLEY SQUARE
NEWYORK

BACK ON OCTOBER 30 SECURED NECESSARY MATERIAL UNDER EXTRA ORDINARY
PRESSURE TO PREVENT TRIP

ALLEN

SF-1201 (R5-69)

COL LT 30



APPENDIX E

APPELLANT'S REQUESTS TO CHARGE

(Numbers 5, 9, 10)

REQUEST NO. 5

Substance

ENTRAPMENT

"The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestedly this function does not include the manufacturing of crime by government officials or by agents of the government." *Sherman v. United States*, 356 U.S. 369, 372, 78 S.Ct. 819, 820.

The defendants Yagid and Stern raise the defense of entrapment.

"The fact that the government officials or their agents merely afford opportunities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment." *United States v. Rosner*, 485 F.2d 1213, 1222 n. 11 (2nd Cir. 1973). "However, a different question is presented when the criminal design originates with the officials of the government and they implant in the minds of persons who are not disposed to violate the law the disposition to commit the alleged offense and induce its commission in order that they may prosecute." *United States v. Russell*, 93 S.Ct. 1637, 1644. "For Congress could not have intended criminal punishment for a defendant who has committed all the elements of a prescribed offense, but who was induced to commit them by the government." *United States v. Russell*, *supra* at 1644.

Thus, "Entrapment occurs only when the criminal conduct was the product of the creative activity of the law enforcement officials or their agents, that is, if they initiate, incite, induce, persuade or lure persons" (Rosner, supra, 1222 n. 11) who otherwise were "not ready and willing without persuasion" to commit such crime and therefore were not just "awaiting any propitious opportunity to commit said offense". *United States v. Sherman*, 200 F.2d 880, 882 (2nd Cir. 1952). *United States v. Weiser*, 428 F.2d 932, 934 (2nd Cir. 1969).

In this regard, the defendants Yagid and Stern assert they were induced, or persuaded, or incited, or lured, to violate the law by the conduct of Olsberg, the government agent, both by Olsberg's conduct in direct discussions with Yagid and thereafter with Stern and also by Olsberg's utilization of the New Jersey land venture, the C. W. Deaton financing and the letter of credit transactions in California, as well as the Stutz motor car loan, as a means to apply pressure on Stern and Yagid (*United States v. Rosner*, at 1222) to commit the crime charged.

"If the prosecution has satisfied you beyond a reasonable doubt that the defendants Stern and Yagid were ready and willing to commit the crime charged and merely were awaiting a favorable opportunity to commit it, then you may find that the government did

no more than furnish a convenient opening for the criminal activity in which the defendants were prepared to engage" (Rosner at 1222). "In such circumstances, you may find that the government agent has not seduced or instigated" (Rosner 1222, n. 11) defendants Stern and Yagid's illegal acts "in the sense of having induced them to do what they otherwise would not have been willing to do." *United States v. Romano*, 278 F.2d 202, 204 (2nd Cir. 1960).

"On the other hand, if you have a reasonable doubt as to whether the defendant would have committed the charge unless there was inducement by the government, then it is your duty to acquit them", Rosner, *supra*, 1222 n.11. For the government cannot by instigation lure the defendants Yagid and Stern to the commission of a crime the defendants otherwise would not have committed just so that the government can punish them, *Sorrells v. United States*, 287 U.S. 435, 448, 53 S.Ct. 210, 215.

N.B. *United States v. Morrison*, 348 F.2d 1003, 1005 (2nd Cir. 19). Allusion to the otherwise "innocent person" should be avoided.

REQUEST NO. 9

in substance

TESTIMONY OF INFORMER

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage as to other crimes charged against him, must be examined and weighed by the jury with greater care and scrutiny than the testimony of an ordinary witness (United States v. Masino, 275 F.2d 129, 133 (2nd Cir. 1960)). The jury must determine with careful scrutiny whether the informer's testimony has been affected by such interest, financial or otherwise, against the defendant. Federal Jury Practice & Instruction, Devitt & Blackmore, Volume I, Sec. 12:02, page 255. Jury Instructions in Federal Criminal Cases, La Buy, Sec. 608, page 50.

REQUEST NO. 10

CREDIBILITY OF DEFENDANT

*in substance
plus more*

A defendant who wishes to testify is a competent witness, and the defendant's testimony is to be judged in the same way as that of any other witness. Federal Jury Practice and Instructions, Sec. 12.11.

I certify that a copy of this Brief
and Appendix was served today by hand
on the United States Attorney, Southern
District of New York.

William E. Epton

June 10, 1974